

13986 PLM-I

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-198387

DATE: June 10, 1980

MATTER OF: Frank E. McGuffin - ^(Request for) Overtime Compensation]

- DIGEST:
- (1) Civilian guard who was allowed duty-free lunch break of at least 20 minutes during his 8-hour shift cannot receive overtime compensation for preshift and postshift duties of not more than 20 minutes since the lunch period offsets the preshift and postshift duties. Although the guard may have been restricted to the base during lunch he was free to leave his post and was free to eat anywhere else. Raymond A. Allen, B-188687, September 21, 1977.
 - (2) Civilian guard was not required to change uniform at work but was free to do so at home. Therefore claim for twenty minutes overtime compensation for uniform changing time is disallowed. William C. Hughes, Jr., B-192831, April 17, 1979.

Mr. James M. Peirce, President, National Federation of Federal Employees, has appealed the disallowance of Mr. Frank E. McGuffin's claim for overtime compensation, believed due incident to Mr. McGuffin's employment as a civilian guard with the Department of the Army's Defense Civilian Police Branch at the Military Ocean Terminal, Bayonne, New Jersey. CNB0014
DIG 047

The record shows that the guards at Military Ocean Terminal worked three 8-hour shifts as follows: 7:30 a.m. - 3:30 p.m.; 3:30 p.m. - 11:30 p.m.; and 11:30 p.m. - 7:30 a.m. Each shift included a paid 30 minute lunch break. Mr. McGuffin claims 40 minutes overtime pay per day for the following: 10 minutes prior to and 10 minutes after his shift for changing into and out of uniform; 5 minutes prior to and 5 minutes after his shift for drawing and returning weapons, ID cards and reports; 10 minutes after his shift for waiting to be relieved from outlying posts. His claim covers the period June 13, 1966 through December 14, 1976.

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Our Claims Division on February 14, 1980, denied Mr. McGuffin's claim (No. Z-2770347) on the basis (1) that he received a 30-minute duty-free lunch break which offset the 20 minutes required for drawing weapons, etc.; and (2) that he was not required to wear his uniform to and from work. The portion of Mr. McGuffin's claim for the period before December 2, 1977, was held to be time barred by the 6-year claims limitation statute, 31 U.S.C. 71a (1976).

In appealing the Claims Division's denial, Mr. Peirce argues that the denial was based on the erroneous belief that the claimant received a 30-minute duty-free lunch period and that the claimant was free to wear his uniform to and from work.

Mr. Peirce states that Mr. McGuffin received a 20-minute lunch period not 30 minutes, but in any event, Mr. McGuffin was on standby duty for the entire 20 minutes as he could not leave the base during this period. Mr. Peirce cites Federal Personnel Manual (FPM) chapter 500, SI-6 in support of this contention. Thus, Mr. Peirce concludes that the lunch period cannot be offset against hours over and beyond the 8-hour day.

With regard to uniform changing Mr. Peirce states:

"The 'uniform' consists not only of trousers and shirt, but also of his cap and insignia, and weapons. It is considered improper to wear a 'part' of a uniform. Military officials frown on and on occasion discipline their subordinates for not 'being in uniform.' The employee must attach all insignia, put on his cap, and obtain his weapons after he gets to work. Therefore, in reality the claimant is prohibited from wearing his complete uniform to and from work."

The Department of the Army states that guards at the Military Ocean Terminal were usually allowed fixed 30-minute lunch periods during their 8-hour shifts, but, in certain circumstances, they were only allowed 20 minutes for lunch. The Army states that the guards were

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free to leave their posts during lunch and were free to eat anywhere within the base. Where a guard had his lunch break interrupted and was required to work through his lunch period he was compensated for that time.

The Army also reports that Mr. McGuffin is exempt from the overtime provisions of the Fair Labor Standards Act. 29 U.S. § 201 et seq. (1976).

Initially, we note that subchapter 1-6 of FPM 550, cited by Mr. Peirce, refers to premium pay for standby duty under 5 U.S.C. § 5545(c)(1), (1976), whereby agencies may pay employees on standby duty up to 25 percent of their base pay for standby duty for longer than ordinary tours of duty. That provision is not relevant here where Mr. McGuffin is claiming overtime compensation under 5 U.S.C. § 5542, (1976).

The rule regarding standby duty during lunch breaks was stated in Raymond A. Allen, B-188687, September 21, 1977, as follows:

"*** the mere fact that the employee was on call and not permitted to leave the building or premises will not defeat a setoff for breaks unless the employee demonstrates that the break-time was substantially reduced by responding to calls."

Mr. McGuffin has not demonstrated that his lunch breaks were substantially reduced by responding to calls. Therefore, we hold that since Mr. McGuffin was relieved from his post for lunch and was free to eat lunch elsewhere, his lunch period must be considered as an offset against the 20 minutes for drawing weapons, etc. See also 47 Comp. Gen. 311 (1967).

As to Mr. McGuffin's claim for overtime compensation for changing into and out of his uniform the Army reports that guards were allowed to and did wear their uniforms to and from work. Although guards may have been required

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to attach insignia, put on their caps and draw weapons on arrival at work, and to wear these items properly while on duty, this does not mean they could not drive to and from work in the rest of their uniform. Since it was not required that the guards change into and out of their uniforms at work, Mr. McGuffin is not entitled to overtime compensation for uniform changing time. William C. Hughes, Jr., B-192831, April 17, 1979.

Accordingly, even though the guards at the Military Ocean Terminal did perform certain preshift and postshift duties such as drawing and returning weapons, ID cards and reports and waiting to be relieved by the new shift coming on duty, the time claimed for these duties is not more than 20 minutes per day and the guards received duty-free lunch breaks of at least 20 minutes which totally offset the time spent on preshift and postshift duties. Hence, Mr. McGuffin is not entitled to overtime compensation for those duties. Raymond A. Allen, supra.

The Claims Division's disallowance of Mr. McGuffin's claim is sustained for the reasons stated above.


For the Comptroller General of
the United States